IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

OP.No. 3988 of 2003(Y)

PETITIONER:

M/S. FORT HERITAGE (P) LTD.
1/283, NAPIER STREET, FORT KOCHI-682 001,
KERALA STATE, REPRESENTED BY THE MANAGING
DIRECTOR.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:
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1. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

2. THE SALES TAX OFFICER (WORKS CONTRACT
& LUXURY TAX), MATTANCHERRY (ERNAKULAM DISTRICT)

3. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF FINANCE,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.6988/2003 IN O.P. NO.3988/2003

DISMISSED:

17.12.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER DT.24.12.97.

P2: TRUE COPY OF ORDER DT.30.11.98.

P3: TRUE COPY OF ORDER DT.22.7.99.

P4: TRUE COPY OF THE MEMORANDUM OF REVISION SUBMITTED BY PETITIONER DT.15.9.99.

P5: TRUE COPY OF POSTING NOTICE DT.27.12.2001.

P6: TRUE COPY OF ORDER DT.18.12.2002 ISSUED BY R1.

P7: TRUE COPY OF NOTICE DT.28.1.2003.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.3988 of 2003

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Dated this the 17th day of December, 2007.

JUDGMENT

The petitioner is challenging Ext.P6 order whereunder the Commissioner of Commercial Taxes has in exercise of powers conferred under Section 8(1) of the Kerala Tax on Luxuries Act, 1976 rejected petitioner's claim for payment of luxury tax at compounded rate under Section 5A of the Act. The Commissioner has vide the impugned order rejected the petitioner's claim for compounding for the year 1999-2000 and thereafter he has suo motu cancelled assessment made at compounded rate under Section 5A for the years 1997-98 and 1998-99.

2. I heard counsel for the petitioner and Government Pleader and have also gone through the impugned order. In order to appreciate the contentions raised, Section 5A at the relevant time has to be gone into and for easy reference Section 5A prior to its substitution by Act 22 of 2006 with effect from 1.4.2006 is extracted hereunder:

> "S.5A(1) Notwithstanding anything contained in Sections 4 or Section 5, any proprietor of a hotel other than--
>
> (i) a Star hotel; or
>
> (ii) a hotel having not less than twenty-five rooms; or

> (iii) a hotel having not less than five rooms, for which the rate of charge per room per day is not less than four hundred rupees,
>
> may apply to the assessing authority for permission to compound the tax at the following rates per annum, namely:-
>
> .....
> .....
> ....."

The petitioner admittedly had 10 rooms in their hotel. According to the petitioner, business is only during tourist season i.e. from October to March and so much so, the average room rent is less than Rs.400/- per person per room. However, on going through the findings in Ext.P6 it is seen that petitioner had published the tariff rate which is in US dollars and for non-A/C double occupancy room, rent charged per day per room was 49 US $. Similarly for single occupancy room rent charged was 39 US $ per day per room. Going by the prevalent exchange rate of US dollar against rupee at Rs.40.50, the rent charged by the petitioner for a double occupancy room was Rs.1984.50 and for a single occupancy room was Rs.1579.50. The Commissioner further found that the rent charged by the petitioner on three persons for single occupancy room was Rs.1,575/- which accounts for recovery of rent at an average rate of Rs.525/- per person. On these

findings he held that petitioner was not entitled to compounding which was wrongly granted for the two years 1997-98 and 1998-99 and the order rejecting the claim for 1999-2000 was also upheld. On going through the above provision, I find the petitioner's case falls under clause (iii) of Section 5A and since the room rent charged per person per day was found as Rs.525/-, petitioner was not entitled to compounding for any of the three years 1997-98, 1998-99 and 1999-2000. Therefore, the order of the Commissioner dismissing the revision filed by the petitioner for 1999-2000 and suo motu revising the assessment for 1997-98 and 1998-99 calls for no interference. The O.P. is therefore devoid of any merit and is dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms